

**281—41.603 (256B,34CFR300) Department review and determination regarding public agency performance.**

**41.603(1) *Review.*** The state shall annually review the performance of each LEA and AEA, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

**41.603(2) *Determination.*** Based on the information obtained and reviewed by the state, the state shall determine whether each LEA and AEA:

- a.* Meets the requirements and purposes of Part B of the Act and of this chapter;
- b.* Needs assistance in implementing the requirements of Part B of the Act and of this chapter;
- c.* Needs intervention in implementing the requirements of Part B of the Act and of this chapter;

or

*d.* Needs substantial intervention in implementing the requirements of Part B of the Act and of this chapter.

**41.603(3) *Criteria for determination.*** The department shall develop criteria for making the determinations required by subrule 41.603(2).

**41.603(4) *Variance of determination.*** In making the determination required by subrule 41.603(2), the SEA in its discretion may adjust or vary from the criteria described in subrule 41.603(3) based on unusual, unanticipated, or extraordinary aggravating or mitigating factors, on a case-by-case basis.

**41.603(5) *Notice and opportunity for a hearing.*** For determinations made under 41.603(2) "*a*" or "*b*," the state shall provide reasonable notice of its determination. For determinations made under 41.603(2) "*c*" or "*d*," the state shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to an AEA or LEA; however, if withholding of funds is a remedy associated with a particular determination, the state shall provide a hearing under rule 281—41.605(256B,34CFR300). Under any hearing granted under this rule or rule 281—41.605(256B,34CFR300), the AEA or LEA must demonstrate that the state abused its discretion in making the determination described in subrule 41.603(2).